IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated.: 27.09.2007

CORAM:

THE HONOURABLE MR. JUSTICE K.MOHAN RAM

Second Appeal No.958 of 2007

and M.P.No.1 of 2007

Ponni Gounder .. Appellant[2nd Plaintiff]

-Vs-

1. The Superintending Engineer
   T.N.E.B. Tatabad, Coimbatore
2. The Assistant Engineer
   TNEB, Coimbatore
3. Gopal
4. Karuppanna Gounder
5. R.K.Ramasamy
6. P.Velusamy
7. Valliammal
8. Savithri
9. Shanmugavadivu
10. Lakshmanan
11. P.Kuppusamy
12. Aruchamy .. Respondents[Defendants 1 and 2, Plaintiffs 1,3,5,7 and 9 to 14].

APPEAL filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 17.03.2006 in A.S.No.36 of 1992 on the file of the Second Additional Subordinate Judge, Coimbatore, reversing the judgment and decree, dated 22.02.1990 in O.S.No.3328 of 1981 on the file of the First Additional District Munsif Court, Coimbatore.

For Appellant : Mr. C.R.Prasanan.

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J U D G M E N T

The second plaintiff in O.S.No.3328 of 1981 on the file of the First Additional District Munsif Court, Coimbatore, who succeeded in the suit, but lost before the lower appellate court in A.S.No.36 of 1992 is the appellant in the above second appeal. For the sake of convenience the parties are referred to as per their ranking in the suit.

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2. The suit was filed seeking for permanent injunction restraining the defendants from disconnecting the agricultural electricity service connection of the plaintiffs on the ground that the plaintiffs are disputing the correctness of the amounts in the bills and the amounts stated in the bills are excessive and inaccurate.

3. The suit was contested by the first defendant by filing a written statement, inter-alia contending as follows:-

The suit is unsustainable both in law and facts; the bills issued represent the actual consumption charges and no surcharge or any other penal charges were levied; if really the plaintiffs have any intention to pay the arrears, they would have paid the same under protest or could have written such complaints to the defendants, but no such complaint was sent by the plaintiffs which will show that they do not want to pay the arrears; the averment in the plaint that the plaintiffs have not received bills for the last six months is not correct; the first defendant is claiming only the amount legally due to them and are taking action in accordance with the Act and Rules; the plaintiffs are defaulters and they have not even paid the consumption charges; on the above said pleadings the suit was sought to be dismissed.

4. After framing appropriate issues the suit was taken up for trial and during trial on the side of the plaintiffs, five witnesses were examined and Exs.A-1 to A-16 have been marked. On the side of the defendants, one witness was examined and Exs.B-1 to B-22 have been marked. On a consideration of the said evidence, the trial court decreed the suit. Being aggrieved by that the defendants filed an appeal in A.S.No.36 of 1992 on the file of the Second Additional Sub Court, Coimbatore. The lower appellate court on a consideration of the evidence on record and the reasonings of the trial court reversed the judgment of the trial court and allowed the appeal. Being aggrieved by that the second plaintiff alone has filed the above second appeal.

5. It is pertinent to point out that other plaintiffs have paid the entire amounts due from them and they have not filed the appeal.

6. Heard Mr.C.R.Prasanan, learned counsel for the appellant/second plaintiff.

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7. Though the learned counsel for the appellant put forth several contentions, this Court considers that the above second appeal can be disposed of on the question of maintainability of the suit. In paragraph 10 of the plaint it is stated as follows:-

> "X. The plaintiffs are disputing the correctness of the amounts in the bills and there is ample evidence to show that the amounts claimed in the respective bills are excessive and inaccurate. Once the bills are not accurate, all the claims in the bills would be illegal and void under

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> the eye of law. The defendants cannot take shelter under Section 24(1) by disconnecting the service connections on the claim of illegal bills and the plaintiffs cannot be deemed to be the defaulters".

The above said averments contained in the plaint makes it very clear that the appellant who was the second plaintiff in the suit has admitted the demand raised and has also produced the demand notice dated 14.10.1981 pertaining to his service connection Nos.62 and 555. Thus, it is clear that a demand has been actually raised on the appellant and the appellant is questioning the correctness of the demand. In such circumstances, the appellant ought to have filed an appeal to the competent Appellate Authority as provided for under the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978 (hereinafter referred to as "the Act").

8. For deciding the issue that arises for consideration in the above second appeal, it will be useful to refer to the provisions contained in Section 2 (2) of the Act, which defines "dues" and Section 2 (3) of the Act, which defines "debtor" and Sections 3(1) and 2(a) of the Act and the same read as follows:-

> 2. (2) "dues" means any sum payable to the Board on account of, -
>
> (i) consumption of electrical energy supplied or
>
> (3) "debtor" means a person by whom any dues are payable;
>
> 3. (1) Every bill for dues payable to the Board by a debtor shall be in the form prescribed by the Board and shall specify conspicuously the date by which such dues are to be paid and shall be served in such manner as may be prescribed by rules.
>
> 2 (a) If a debtor disputes his liability to pay the whole or part of the dues specified in the bill referred to in sub-section (1) he may, within such time as may be prescribed, prefer an appeal to the appellate authority to be specified by the Board."

A combined reading of the above said provisions makes it abundantly clear that the appellant owes money to the Board towards the consumption of electrical energy supplied and when such dues have admittedly not been paid, the appellant comes under the definition of "debtor" under the Act. Admittedly, the respondents have raised a demand for the dues, as seen from the demand notice, dated 14.10.1981, therefore, if the appellant was aggrieved by the demand on the ground that it is excessive, the appellant ought to have filed an appeal to the Appellate Authority under Section 3 (2)(a) of the Act. Admittedly, the appellant has not filed any such appeal, but instead has chosen to file the suit.

9. Though the maintainability of the suit has not been raised by the respondents in the light of the availability of an alternative remedy of Statutory Appeal under Section 3(2)(a) of the Act, in the written statement filed by the respondents, it is stated that the suit is

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unsustainable both in law and facts.

10. Considering this aspect, the Courts below ought to have framed an issue regarding the maintainability of the suit, but unfortunately both the Courts below have failed to frame such an issue.

11. In the light of the above said provisions of the Act when this Court asked the learned counsel for the appellant as to how the suit is maintainable, the learned counsel had no answer.

12. In the decision reported in (2007) 5 MLJ 58 (Nahar Enterprises V. Chairman, T.N.E.B.) it has been held that a bar to file a civil suit may be express or implied and an implied bar may arise when a Statute provide a special remedy to an aggrieved party and consequently, a suit challenging an additional levy on the ground of alleged theft of energy is not maintainable in view of effective remedies under relevant electricity laws. In this case, admittedly, the effective alternative remedy by way of Statutory appeal is available to the appellant under Section 3(2)(a) of the Act and admittedly such a remedy has not been availed off by the appellant, but unfortunately the above said provisions were not brought to the notice of the Courts below and the Courts below have not taken care to consider as to whether the suit for bare injunction is maintainable and only because of that the trial court entertained the suit and decreed it. Though the lower appellate Court has allowed the appeal it has allowed it on a different aspect and the lower appellate court has not gone into the question of maintainability of the suit. This Court is of the considered view that the suit is not maintainable for the above said reasons.

13. At this juncture, the learned counsel for the appellant submitted that the appellant may be given an opportunity to file the Statutory Appeal available under Section 3(2)(a) of the Act and as the time for filing of appeal has expired, a direction may be issued to the respondents to entertain the appeal that may be filed by the appellant without reference to the period of limitation.

14. Considering the said submission, it is directed that the Appellate Authority under Section 3(2) (a) of the Act shall entertain the appeal from the appellant, if such an appeal is filed within a period of four (4) weeks from the date of receipt of a copy of this judgment, without reference to the period of limitation prescribed under the Act.

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15. The above second appeal is dismissed. However there will be no order as to costs. Consequently the connected MP is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

srk

To
1. The Second Additional Subordinate Judge, Coimbatore
2. The First Additional District Munsif, Coimbatore.
+ 1 CC To Mr. C.R.Prasanan, Advocate SR NO.60426

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